

**REMARKS**

Claims 1-5, 8 and 9 are pending in this application. By this Amendment, claims 1, 5 and 8 are amended. The amendment to claims 5 and 8 are for form. Support for the amendments to claim 1 can be found, for example, in paragraphs [0045], [0049] and [0052] and canceled claim 7. No new matter is added. Applicant respectfully requests reconsideration and prompt allowance in view of at least the following remarks.

The Office Action rejects claims 1-5 and 7-9 under 35 U.S.C. §112, first paragraph, for allegedly not complying with the written description requirement. The rejection of claim 7 is moot because the claim is canceled. The rejection of claims 1-5, 8 and 9 is moot because claim 1 is currently amended to no longer recite the recitation "such that amplitude of the detected signal does not exceed an upper limit threshold or is not below a lower limit threshold." Applicant respectfully requests withdrawal of the rejection.

The Office Action rejects claims 1-5 under 35 U.S.C. §112, second paragraph, as allegedly indefinite. Applicant erroneously failed to include the required mark-ups to the claims in the December 23, 2008 Amendment. Applicant asserts that the intended language of claim 1 is "a signal strength variance value" and not "a signal strength deviation value." Applicant also amends claim 5 to correct the antecedent basis and clarify the intended subject matter of the claim. The rejection of claim 7 is moot because it is canceled. Applicant respectfully requests withdrawal of the rejection of claims 1-5, 8 and 9.

The Office Action rejects claims 1-5 and 7-9 under 35 U.S.C. §103(b) over U.S. Patent No. 5,101,831 (Koyama). Applicant respectfully traverses the rejection.

Koyama fails to disclose "detecting signals of the examinee with a biosignal detector that is non-restraint, non-contact and non-invasive to the examinee," as recited in claim 1. Rather, Koyama discloses a measuring means 11 that receives a pulse wave signal input from a pulse wave sensor (C3:L14-16). Koyama discloses that the pulse wave sensor is a

photosensor that detects variation in blood flow at a fingertip, ear lobe or the like based on light reflectance or transmission property (C3:L16-19). Koyama's pulse wave sensor cannot reasonably constitute a "non-restraint, non-contact and non-invasive" detector because the pulse wave sensor must at least be restrained to and in contact with the fingertip, ear lobe or the like of the examinee. Accordingly, Koyama fails to disclose "detecting signals of the examinee with a biosignal detector that is non-restraint, non-contact and non-invasive to the examinee," as recited in claim 1.

Further, Koyama fails to disclose "calculating a signal strength obtained as a reciprocal of a coefficient obtained by gain-controlling the detected signals, the gain being set so that an amplitude of the output signals becomes small when a peak value of the signals exceeds an upper limit threshold, whereas the amplitude becomes large when the peak value is below a lower limit threshold," as recited in claim 1. Rather, Koyama discloses determining a reference pulse rate  $H_r$  that is used as the pulse rate during resting and awakening state from the bedrest time to the sleep-onset time (C3:L55-58). In a reference pulse-setting means 12, where six of the pulse rates  $H(t)$  are provided from the measuring means 11 outputted every three minutes and grouped together (C3:L59-62). A user attains a resting state when more than four points of less than  $\pm 3$  with respect to the average value for the six pulse rate values are present (C3:L62-66). Regression analysis is then performed based on values left after removing the values lying outside of the average value to determine a sleep state (C3:L66-C4:20). Because the analysis disclosed in Koyama is limited to the above analysis, Koyama fails to disclose "a signal strength obtained as a reciprocal of a coefficient obtained by gain-controlling the detected signals," as recited in claim 1.

Based on the foregoing, Koyama fails to disclose all of the features recited in claim 1. Thus, claim 1 is allowable over Koyama. Claims 2-5, 8 and 9 are also allowable over

Koyama for at least the same reasons as claim 1, as well as for the additional features the claims recite. Applicant respectfully requests withdrawal of the rejection.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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